

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

SANDRA CEE
Claimant

APPEAL NO. 10A-UI-06922-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMPLEWARE CORPORATION
Employer

**Original Claim: 04/19/09
Claimant: Appellant (2)**

Section 96.3-7 – Benefit Overpayment
Section 96.5-7 – Vacation Pay Deduction

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated April 1, 2010, reference 02, which held she had been overpaid unemployment insurance benefits in the amount of \$132.00 for one week between April 19, 2009, and April 25, 2009, because the claimant failed to report or incorrectly reported vacation pay from Compleware Corporation. After due notice was issued, a telephone hearing was held on June 28, 2010. The claimant participated personally. The employer participated by Ms. Suzette Wheeler and Ms. Sarah Martins.

ISSUE:

At issue is whether the claimant has been overpaid unemployment insurance benefits and whether the claimant correctly reported vacation pay.

FINDINGS OF FACT:

Having considered all the evidence in the record, the administrative law judge finds: Ms. Cee was employed as a full-time worker for Compleware Corporation until May 1, 2009, when she was permanently separated from employment due to business conditions. On May 29, 2009, Ms. Cee was issued payment for 12 hours of accrued personal time off (PTO) in the amount of \$132.00. The employer did not pay the claimant for vacation pay as such. Under the employer's policy, employees may use paid time off for any reason the employee chooses, including sick time, etc.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not receive "vacation pay" as defined by the regulation but received paid time off, which need not be deducted from unemployment insurance benefits.

Iowa Code section 96.5-7 provides:

An individual shall be disqualified for benefits: ...

7. Vacation pay.

a. When an employer makes a payment or becomes obligated to make a payment to an individual for vacation pay, or for vacation pay allowance, or as pay in lieu of vacation, such payment or amount shall be deemed "wages" as defined in section 96.19, subsection 41, and shall be applied as provided in paragraph "c" hereof.

b. When, in connection with a separation or layoff of an individual, the individual's employer makes a payment or payments to the individual, or becomes obligated to make a payment to the individual as, or in the nature of, vacation pay, or vacation pay allowance, or as pay in lieu of vacation, and within ten calendar days after notification of the filing of the individual's claim, designates by notice in writing to the department the period to which the payment shall be allocated; provided, that if such designated period is extended by the employer, the individual may again similarly designate an extended period, by giving notice in writing to the department not later than the beginning of the extension of the period, with the same effect as if the period of extension were included in the original designation. The amount of a payment or obligation to make payment, is deemed "wages" as defined in section 96.19, subsection 41, and shall be applied as provided in paragraph "c" of this subsection 7.

c. Of the wages described in paragraph "a" (whether or not the employer has designated the period therein described), or of the wages described in paragraph "b", if the period therein described has been designated by the employer as therein provided, a sum equal to the wages of such individual for a normal workday shall be attributed to, or deemed to be payable to the individual with respect to, the first and each subsequent workday in such period until such amount so paid or owing is exhausted. Any individual receiving or entitled to receive wages as provided herein shall be ineligible for benefits for any week in which the sums, so designated or attributed to such normal workdays, equal or exceed the individual's weekly benefit amount. If the amount so designated or attributed as wages is less than the weekly benefit amount of such individual, the individual's benefits shall be reduced by such amount.

d. Notwithstanding contrary provisions in paragraphs "a", "b", and "c", if an individual is separated from employment and is scheduled to receive vacation payments during the period of unemployment attributable to the employer and if the employer does not designate the vacation period pursuant to paragraph "b", then payments made by the employer to the individual or an obligation to make a payment by the employer to the individual for vacation pay, vacation pay allowance or pay in lieu of vacation shall not be deemed wages as defined in section 96.19, subsection 41, for any period in excess of one week and such payments or the value of such obligations shall not be deducted for any period in excess of one week from the unemployment benefits the individual is otherwise entitled to receive under this chapter. However, if the employer designates more than one week as the vacation period pursuant to paragraph "b", the vacation pay, vacation pay allowance, or pay in lieu of vacation shall be considered wages and shall be deducted from benefits.

e. If an employer pays or is obligated to pay a bonus to an individual at the same time the employer pays or is obligated to pay vacation pay, a vacation pay allowance, or pay in lieu of vacation, the bonus shall not be deemed wages for purposes of determining benefit eligibility and amount, and the bonus shall not be deducted from unemployment benefits the individual is otherwise entitled to receive under this chapter.

Paid time off (PTO) is the equivalent of excused personal leave. It is paid time off that an employee accrues and that can be used for sick leave, vacation leave, or other personal time off pursuant to the employer's PTO policy. Paid time off is not equivalent to vacation pay, which is a separate, distinct benefit the Iowa legislature made deductible from unemployment insurance benefits by enacting Iowa Code section 96.5-7.

Based upon the evidence in the record and the application of the appropriate law, the administrative law judge concludes the claimant did not receive vacation pay that was deductible from her unemployment insurance benefits. Benefits are allowed, provided the claimant is otherwise eligible.

The administrative law judge concludes, based upon the evidence in the record, that the overpayment issue in this case was created based upon the determination the claimant had incorrectly reported vacation pay for one week between April 19, 2009, and April 25, 2009.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes the claimant is not overpaid unemployment insurance benefits in the amount of \$132.00 pursuant to Iowa Code section 96.3-7, as the claimant did not fail to report or incorrectly report vacation pay during the week in question.

DECISION:

The representative's decision dated April 1, 2010, reference 02, is reversed. The claimant is not overpaid unemployment insurance benefits in the amount of \$132.00 for the one week between April 19, 2009, and April 25, 2009. The claimant did not fail to report or incorrectly report vacation pay from Compleware Corporation for that week. Benefits are allowed, provided the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw